IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.310 OF 2007

Mrs.Colleen Bocarro : Petitioner

(Orig. Deft. No.1)

V/s.

Mr.Antony Reginald Carvalho & Anr. : Respondents

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Mr.V.A.Thorat, Senior Advocate, with Mr.R.A.Thorat and Mr.P.J.Thorat for the petitioner.

Mr.P.K.Dhakephalkar, Senior Advocate, i/b. Mr.Ajay S. Patil for respondent no.1.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 02, 2007.

P.C.

1. By this Revision Application, the tenant has challenged the concurrent findings of two Courts below that she has violated section 13(1)(a)(e) and (l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. At the hearing of the case, there was no dispute that if the decree is sustainable on any of the grounds, then it is good enough. Argument has been advanced mainly in relation to clause (l) which reads as follows:-

"(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or has been allotted to suitable residence."

2. There is no dispute that it is settled that this ground is available only where the tenancy has been created for a residential purpose. Hence, the submissions on behalf of the petitioner are mainly in support of the contention that tenancy was created for a commercial purpose. In this case, the commercial purpose alleged by the petitioner is the business of hair-dressing. The suit premises are a flat with one-bed-room hall and kitchen in a building where most of the premises have been let out for commercial purpose such as banking. This tenancy was created sometime in the year 1940. The respondent purchased the premises in the year 1976 and thereafter sued for eviction. Obviously, he is not aware of the facts when tenancy was created. The petitioner, however, asserted that tenancy was created in the year 1940 in favour of her mother for residential-cum-commercial purpose. There is no evidence in writing about the purpose for which the tenancy was created. Moreover, the petitioner herself was admittedly not present when the tenancy was created. There is no evidence when the tenancy was created in favour of her

mother. Thus, in order to support her case, certain customers were examined by the petitioner who deposed that they have gone to the petitioner's hair-dressing saloon and the income-tax return of the year 1973-74 where the petitioner has shown income from the business of hair-dressing.

3. The trial Court considered the matter and came to the conclusion that there is no evidence of the premises having been used for a commercial purpose, viz., of hair-dressing. Having regard to other evidence, it can be safely inferred that the premises were predominantly let out for residential purpose, though some side business of hair-dressing has been carried on by the petitioner.

4. The lower appellate Court came to the conclusion that the premises cannot be said to have been let out for commercial purpose at all. It came to the conclusion that it cannot be inferred from the entries in the income-tax return that the premises were let out for commercial purpose. The appellate Court further concluded on the basis of evidence that no hair-dressing business was being run in the suit premises since the year of the income-tax return i.e. 1973-74 and the evidence of her sons numbering three were college going

students and the one-bed-room hall kitchen could not have been used for residential as well as for hair-dressing business.

5. Regarding the above finding of fact, Mr.Thorat, the learned counsel for the petitioner, submitted that the Courts below have not taken into account the statements of the plaintiff which were elicited in cross-examination. The statements are to the effect that the plaintiff was not aware that the defendant no.1 was doing hair-dressing business in the suit premises with her mother. This statement does not necessarily come to the aid of the petitioner. Even though it is true that the appellate Court has not considered this statement, it would not constitute a material irregularity in arriving at the finding. Indeed, it cannot be said that the Court has committed a material irregularity unless its judgement records that every statement has been independently considered and analysed. Mr.Thorat, the learned counsel for the petitioner, made a reference to the finding in regard to acquisition of alternative accommodation by the defendant no.1, but I find from the judgement of the lower appellate Court that a finding in that regard has been arrived at on the basis of evidence.

6. In view of these circumstances, I find no

jurisdictional error committed by the appellate Court in dismissing the petitioner’s appeal nor does the judgement suffers from any material irregularity in arriving at the finding. There is, therefore, no merit in the Revision Application which is hereby dismissed.

7. At this juncture, Mr.Thorat prays for stay of the decree of eviction for a period of ten weeks from today. It seems appropriate, in the interest of justice, to grant the request, however, subject to the condition that the petitioner shall not create any third-party interest in the suit premises for a period of ten weeks from today.

S.A. BOBDE, J.